



Digital Age
**Employment and working
conditions of selected types of
platform work**

**National context analysis
Germany**

[Employment and working conditions of
selected types of platform work](#)

Authors: Willem Pieter de Groen, Zachary Kilhoffer, Karolien Lenaerts (CEPS)

Research Manager: Irene Mandl

Eurofound reference number: WPEF18055

Related report: Digital Age – Employment and working conditions of selected types of platform work

Acknowledgements: The authors would like to thank Ana Silva of CEPS for her valuable input and review. Moreover, the authors are grateful to Irene Mandl, Sara Riso and Rebecca Florisson of Eurofound and the Presidency office of the Austrian Ministry of Labour, Social Affairs and Consumer Protection (BMASGK) for their feedback on earlier versions of this report. The authors also thank all the interviewees for their contribution to this report. All remaining errors are the responsibility of the authors.

© European Foundation for the Improvement of Living and Working Conditions (Eurofound), 2018
Reproduction is authorised provided the source is acknowledged.

For any use or reproduction of photos or other material that is not under the Eurofound copyright, permission must be sought directly from the copyright holders.

Any queries on copyright must be addressed in writing to: copyright@eurofound.europa.eu

The European Foundation for the Improvement of Living and Working Conditions (Eurofound) is a tripartite European Union Agency, whose role is to provide knowledge in the area of social, employment and work-related policies. Eurofound was established in 1975 by Council Regulation (EEC) No. 1365/75 to contribute to the planning and design of better living and working conditions in Europe.

European Foundation for the Improvement of Living and Working Conditions

Telephone: (+353 1) 204 31 00

Email: information@eurofound.europa.eu

Web: www.eurofound.europa.eu

Contents

Introduction	1
Overview	1
Regulatory frameworks	4
Formal relationships	10
Organisation and representation in platform work	14
References	18
Annex: Platforms mentioned in text	23

Introduction

A recent development on European labour markets, platform work, has attracted significant attention in academic and policy circles (Eurofound, 2015). Still, much of the available evidence is anecdotal, and there is limited understanding of the implications of platform work for the labour market and for the workers.

There is no uniform definition for platform work or related concepts in Germany. For this report, platform work takes its definition from Eurofound (2018) as follows:

Platform work refers to an employment form that uses an online platform to enable organisations or individuals (workers) to access other organisations or individuals (clients) to solve specific problems or to provide specific services in exchange for payment.

Thus, the research focus is on online platforms matching supply and demand for paid labour. The main features of platform work, as understood in this report, are: paid work organised through online platforms; three parties involved, including the online platform, client and worker; aim is to conduct specific tasks or solve specific problems; form of outsourcing/contracting out; break-down of ‘jobs’ into ‘tasks’; on-demand services.

This working paper is the country contribution for Germany for Eurofound’s research project ‘Digital age: Employment and working conditions of selected types of platform work’. It explores the context of platform work in Germany in terms of the applicable regulatory frameworks as well as the organisation and representation of platform workers in the country.

The analysis is based on desk research and 6 semi-structured interviews with experts from academia (1), policymakers at national and local level (2) and representatives of employee and employer organisations (3) between December 2017 and January 2018.

Overview

The development of the platform economy in Germany coincided with the progression of broader changes to the labour market, namely automation and digitalisation, which helped bring about changes generally discussed as *Arbeiten 4.0*¹ (Work 4.0) (BMAS, 2016a). Interviewed experts agreed that automation and digitalisation, combined with the growing ubiquity of internet-enabled smartphones, contributed to the emergence and growth of platform work. Connectivity that was once only possible with a computer at home has become possible virtually everywhere. One interviewed academic stated that the rise in unemployment associated with the financial crisis, particularly among young people, may also have been a factor that led to greater interest amongst Germans in working online. In turn, the distressed economic conditions also spurred the demand for cheaper services. Platform work spilled over from the United States and elsewhere. German platforms also emerged, such as Clickworker². Several interviewees further remarked that platform work began in online work, but nowadays especially locally delivered work appears to be prevalent.

There exists no official or formal definition for platform work in Germany, and little terminological consistency across relevant literature. At a general level, platforms are often called ‘digital platforms’, ‘marketplace platforms, or ‘crowd working platforms’. For some

¹ *Arbeiten 4.0* or ‘Work 4.0’, which is the dialogue process led by the *Bundesministerium für Arbeit und Soziales* (BMAS, Federal Ministry for Work and Social Affairs), explores the changing world of work. The discussion came about in the framework of ‘*Industrie 4.0*’ (‘Industry 4.0’), which explored the changes brought about by greater automation and digitalisation of industry.

² Each mentioned platform is listed in the Annex.

German authors including Schmidt (2017) and Mrass and Peters (2017), ‘crowd working platforms’, ‘cloud working platforms’, or ‘crowdsourcing platforms’ refer only to a subset of platforms that intermediate online work, whereas ‘gig working platforms’ refer to platforms intermediating physical work performed in a specific location. However, it is important to note that German authors frequently use the same words to refer to different ideas and different words for the same concepts.

Variety of platform work

The JRC database lists 53 platforms in Germany of which 21 are active.³ Leimeister et al (2016b) identify five types of platforms for online work: Micro-tasking (for example, Clickworker); marketplace/freelancing (for example, Crowd Guru); design (for example, 99designs); software testing (for example, Testbirds); and innovation (for example, jovoto). The last category is more difficult to define, but exemplary ‘innovation’ platforms might offer services such as ‘idea-engineering’, which could mean designing a corporate communication strategy (Leimeister et al, 2016b). Schmidt and Kathmann (2017) identify five types of physical platforms: care (for example, Betreut.de); cleaning (for example, BOOK A TIGER); delivery (for example, Foodora); manual craft (for example, MyHammer); and other. The last category is quite diverse, ranging from platforms offering massage (for example, Massagio), moving assistance (for example, Movinga), and numerous other miscellaneous services. In each of these five categories, clients select a specific platform worker, or the platform selects a platform worker for them. An additional possibility is what Schmidt and Kathmann (2017) call ‘local micro-tasking’ platforms, which use open calls to distribute tasks, rather than delegation to a specific individual. ‘Local micro-tasking’ platforms, such as Streetspotr and appJobber, intermediate tasks that fall under ‘retail intelligence’.⁴

Spread of platform work

Existing evidence suggests that platform work in Germany is still a fairly small phenomenon. Huws et al (2016) conducted an online survey of 2,180 German respondents in April 2016, and weighted the results to be representative of the general population. Their findings indicated that 12% of respondents had ever carried out paid work via online platforms. The number of Germans engaged in weekly paid work via online platforms was 6%. Only 3% of Germans indicated that such activities constituted their only source of income, while 25% of all self-described platform workers in Germany reported that more than half of their income derives from platform work activities.⁵ The estimates of Huws et al (2016) are higher than those of Eurobarometer, which found that roughly 27% of Germans aged 15 and over had ever provided services including platform work and renting accommodation via platforms, of which 7% did so monthly, as of March 2016 (EC, 2016).

Other Germany-specific estimates of platform workers are lower still. A study of ‘external crowdworkers’ in Germany, which corresponds to those performing online platform work activities, found that the number of registered German platform workers stood at 1.2 million people for January 2017 (Mrass and Peters, 2017). This corresponds to just over 1.8% of the German population aged 15 or over.⁶ With a registration rate of 1.8%, and an estimated

³ The JRC database is unavailable to the public.

⁴ An example of retail intelligence might be a corporate chain creating an open call to take and send a picture of a given product display within a certain store.

⁵ However, the definition of platforms used by Huws et al (2016) is broader than that of platform work, and the definition of ‘platform worker’ is also broader than that of the present study. For example, Huws et al (2016) consider anyone using online platforms to sell goods as ‘platform workers’.

⁶ Authors’ own calculations based on Eurobarometer population data for 2016: 64,336,389 people in Germany aged 15 or over.

activity rate of 25.2% (Mrass and Peters, 2017), the number of Germans regularly using these ‘external crowdsourcing platforms’ would be less than 0.5% of the population.

The use of platforms appears to be a side activity for most German platform workers. A study of 248 ‘Crowdworkers’ in Germany found that 97% earned less than €500 monthly from their platform work activities (Leimeister, 2016a).⁷ In addition, a study of 408 platform workers from two German platforms found that 39% are formally employed outside of platform work, while 31% are taking part in academic or vocational programmes (Bertscheck et al, 2016).

Many German firms have embraced the use of platform work services. A study from the *Bundesministerium für Arbeit und Soziales* (BMAS, Federal Ministry for Work and Social Affairs) found that many German companies are utilising platform work services. As of the third quarter 2016, 3.6% of small IT (information technology) companies (5-19 employees), and 3.2% of large IT companies (>100 employees) have used ‘crowdworking’ services (BMAS, 2016a). Roughly 1.5% of small and 0.9% of large manufacturing companies have also used ‘crowdwork’. As one example, Deutsche Bahn, the German railway service, has a contract with appJobber. Deutsche Bahn uses appJobber to receive up-to-date information about the condition of hardware at specific locations (European Space Agency, 2013; Fair Crowd Work, 2017a). One employee organisation representative interviewed for this project stated their observation that large German car manufacturers fear becoming less relevant compared to technology companies, as the car market transitions to electric and self-driving cars. A representative of an employee organisation stated that German car manufacturers fear they will become vendors to software companies, who are expected to become the head of the value chain and mobility in the future. Thus, German manufacturers feel great pressure to become more flexible, and they want to introduce platform work models internally. As such, German firms see platform work as one way to stay abreast of technology trends.

Attempts to quantify the size of the platform economy in terms of revenue and usership are difficult due to an absence of official statistics and an official definition of platforms (De Groen et al, 2017). No other publicly available data have been found, and the prevalence of different types of platform work is poorly understood. However, interviewed experts are unanimous in their expectation of the continued growth of platform work, as well as the increasing relevance of platform work for Germany’s labour market.

Debate on the labour market impact of platform work

Germany experienced successive waves of positive and negative press on platform work. The positive media coverage highlights the innovation and novelty of platform work, while the negative press focuses on an erosion of working conditions (BMAS, 2016a). This debate has taken place in media (such as newspapers), trade unions forums, written statements by employer organisations, platforms’ discussions,⁸ as well as official government channels. All interviewed experts agreed that the official dialogue process of Work 4.0, which BMAS initiated in April 2015, played an important role in the debate. Social partners, academics and experts, policymakers, platform workers, and industry representatives took part in Work 4.0 discussions. The most comprehensive document resulting from Work 4.0 is the *Weißbuch* (Whitebook), which summarises a number of forums and academic literature on platform work in Germany (BMAS, 2016a).

To varying degrees, most sides of the public debate in Germany acknowledge the potential for positive and negative effects of platform work. For example, platform work can create easier

⁷ ‘Crowdworkers’ in this study only refers to online platform work activities.

⁸ According to an interviewed employee organisation representative and an academic expert, two German platforms, Testbirds and jovoto, are particularly engaged in attempts to improve public perception of platforms.

access to work opportunities, primarily for people who previously had limited access (BMAS, 2016a). Beneficiaries may include low-skilled or inexperienced persons (Selzer, 2015). On the other hand, online platforms create a market where Germans compete with international workers who can work for lower wages, resulting in downwards wage pressure. This may be particularly relevant for programmers whose work can rather easily be outsourced. However, evidence for both positive and negative labour market effects is largely anecdotal.

The debate over platform work in Germany, in short, concerns the tension between preserving flexibility for platform workers, platforms, and clients, while ensuring security for platform workers and funding for government programmes like pensions. Stated differently, it is about the merits of increased access to work, alongside concern over decreased quality of work. Translated in the policy debate, the main struggle is to reconcile the desire to allow innovation and progress in a growing sector of the economy and adequately protect all workers (BMAS, 2016a).

Regulatory frameworks

Germany has a civil law system. Thus, regulatory frameworks are based on written law including the constitution, legal codes, and legal statutes. The federal constitution and federal statutes apply everywhere in Germany, and in addition, each federal state has its own constitution. Primary areas of law such as civil law and social law are covered by unified federal codes – respectively the *Bürgerliches Gesetzbuch* (BGB, Civil Code) and *Sozialgesetzbuch* (SGB, Social Code) (Kirchner and Morgenroth, 2017).

German employment law covers the relationship between employers and individual employees (and other categories of workers), while German labour law covers the relationship between collective parties – the employer, employer organisations, works councils, and trade unions. Employment and labour law are also governed by federal statutes, but there is no unified employment and labour law code. For this reason, case law enacted through German courts is more important for labour and employment than in other areas. German employment and labour law are also influenced by EU law, as legislature and jurisdiction must comply with the regulations and directives of the EU and their interpretation by the European Court of Justice (Kirchner and Morgenroth, 2017).

As no specific regulatory framework exists for platform work in Germany, conventional regulatory frameworks apply based on employment status and the type of work performed.

Employment law

Employment law in Germany derives from a wide range of sources. Important elements include the BGB, which regulates matters including payment, disciplinary measures, temporary inability to work, health insurance, and notice periods for termination.⁹ Other sources include the *Mindestlohngesetz*¹⁰ (MiLoG, Minimum Wage Act); *Allgemeines Gleichbehandlungsgesetz*¹¹ (AGG, General Equal Treatment Act); SGB Books II-III on employment promotion and basic social security benefits for job seekers; SGB Book IV covering social security regulations; and SGB Books VI-IX on specific social security matters, rehabilitation, and participation of people with disabilities (Bayreuther, 2017). Kirchner and Morgenroth (2017) divide German employment law into eight categories: employment contract; dismissal protection; minimum wage; anti-discrimination; data protection and privacy; part-time and fixed-term; paid leave entitlement; and limited liability. Anti-discrimination and data protection and privacy apply to platform workers generally, and

⁹ § 611 BGB onwards.

¹⁰ MiLoG 11 August 2014.

¹¹ AGG 18 August 2006.

are discussed first. The other six categories only apply to platform workers who are employees¹² and are discussed afterwards.

The General Equal Treatment Act (AGG) prohibits discrimination based on race or ethnicity, religion or belief, sex, disability, age, or sexual orientation. Prohibited discriminatory behaviour includes direct and indirect discrimination, harassment, sexual harassment, and instructions to discriminate.¹³ The AGG applies to all workers in Germany, including employees, self-employed, and employee-like persons.¹⁴

Data protection and privacy are particularly important in Germany, as privacy is an *allgemeines Persönlichkeitsrecht* (fundamental personal right) guaranteed in the German Constitution. The German government and social partners have specifically noted their concern over data protection and privacy with respect to platforms' data practices (Ilsøe, 2017). General principles of German data protection apply to the dealings of platforms, and apply to all platform workers. These include the *Bundesdatenschutzgesetz* (BDSG, Federal Data Protection Law) of 1977, as well as general principles adopted by the *Bundesverfassungsgericht* (German Constitutional Court) of 1983, the latter of which formed the foundation for the development of modern data protection laws. Other legal principles for data protection that may apply include *Zweckbindung* (appropriation), *Datensparsamkeit* (data parsimony), *Transparenzgebot* (transparency principle), *Erforderlichkeit* (necessity), and *Verhältnismäßigkeit* (proportionality) (BMAS, 2016a). Still, clarity is somewhat lacking for the application of these laws, and existing discussion is largely theoretical. The EU-GDPR (European Union General Data Protection Regulation) was released in May 2018, and is expected to help clarify and harmonise data laws across Member States and economic sectors (Däubler, 2016b; BMAS, 2016a; Kirchner and Morgenroth, 2017).

Arbeitsverträge (employment contracts) are regulated by the Civil Code on General Contractual Terms and Conditions. The contracts must be sufficiently transparent and not contain any substantial disadvantage to the employee (Kirchner and Morgenroth, 2017).

Dismissal protection stipulates extraordinary termination for good cause,¹⁵ and ordinary termination that abides by statutory and contractual notice periods.¹⁶ If a works council exists for the business, the employer must inform and hear from it prior to any dismissal.¹⁷ The works council and employer also agree on entitlement to dismissal payments.

The Minimum Wage Act¹⁸ stipulates that from January 2017 to 31 December 2018, the German minimum wage is €8.84 gross per working hour. The minimum wage only applies to German platform workers who are formally employed, and only if both worker and platform are located in Germany (Däubler, 2016a). Otherwise, platform workers are only entitled to receive the agreed remuneration after the provision of service.¹⁹

The *Teilzeit- und Befristungsgesetz* (TzBfG, Part-time and Fixed-Term Employment Act) covers part-time and fixed-term employment regulations. The former allows employees to begin working part-time if the employee has been employed more than six months, the employer has more than 15 employees, and there are no operational reasons to oppose a

¹² See below for more discussion on employment contracts and employment status.

¹³ § 1 AGG.

¹⁴ § 6 AGG.

¹⁵ § 626 BGB.

¹⁶ § 1 KSchG (Kündigungsschutzgesetz, Wrongful Dismissal Protection Act).

¹⁷ § 102 BetrVG (Betriebsverfassungsgesetz, Works Constitution Law).

¹⁸ MiLoG of 11 August 2014.

¹⁹ § 611 sect. 1 BGB, and § 614 BGB.

reduction in working hours. The TzBfG stipulates when fixed-term contracts are permissible, the duration they can last, and how temporary contracts can be extended.²⁰

Paid leave entitlement is governed by the *Bundesurlaubsgesetz* (BUrlG, Federal Holiday Act) and *Entgeltfortzahlungsgesetz* (EFZG, Continuation of Remuneration Act). The BUrlG entitles employees to 20 days of paid holiday per calendar year assuming a five-day work week. The EFZG entitles employees to up to six weeks of paid time off per calendar year due to illness.

Employee liability for damages to the employer or third parties is limited. The *Bundesarbeitsgericht* (BAG, Federal Labour Court) determines liability based on the level of negligence, and the level of the employee's salary versus the cost of damages.

Social protection

Germany's obligatory social security system is composed of sickness insurance, long-term care insurance, pension insurance, accident insurance (discussed below), and unemployment insurance (European Commission, 2013). Coverage by these branches is mandatory for all German employees. Under certain conditions, solo self-employed and employee-like people are also subject to obligatory social insurance.²¹ This occurs when economic dependence can be proven, as discussed below. Generally, the requirements for obligatory social insurance are not met by those performing online platform work activities (Mecke, 2016; Brose, 2017). No reviewed literature has examined whether platform workers engaged in locally delivered platform work activities qualify for obligatory social insurance.

For obligatory sickness insurance, long-term care insurance, and pension insurance, the employee is responsible for approximately 53% of the contribution, whereas the employer is responsible for about 47% (European Commission, 2013). The rate of contribution is calculated as a percentage of income up to a maximum monthly and annual ceiling. For example, employees contribute between 1.275 – 1.525% of their income to long-term care insurance, but contributions cannot exceed the given percentage of €4,425 monthly or €53,100 annually for 2018. The result is a decreasing tax burden for higher incomes (Sheller Int., 2017). Solo self-employed individuals can opt in to the obligatory social security system and receive sickness insurance, long-term care insurance, and pension insurance, but they are responsible for 100% of the contribution. Paid maternity leave is only obligatory for employees and homeworkers, and is paid for through public or private health insurance.²² No statutory entitlement exists for paternity leave (Blum and Erler, 2013).

Entitlement to unemployment insurance is based on having been an employee for 12 of the previous 24 months.²³ Employees and employers are each responsible for paying 1.5% of the gross wage to unemployment insurance. Self-employed individuals can only contribute to the unemployment insurance fund and receive benefits if they work at least 15 hours per week in their own business, and have contributed to the unemployment insurance fund for 12 of the previous 24 months. Meeting these criteria is often difficult for platform workers because of frequent transitions between dependent and independent work, as well as a lack of regularity in working time (Chesalina, 2017). An unemployed individual is allowed to work less than 15 hours per week, excluding occasional deviations of short duration, and still receive unemployment benefits.²⁴ Such *Nebentätigkeiten* (side activities) are not permitted if they interfere with one's availability to participate in the labour market.

²⁰ § 14 TzBfG.

²¹ § 12 sect. 2 SGB IV.

²² *Bundeselterngeld und Elternzeitgesetz* (BEEG, Law on Parental Benefits and Parental Leave).

²³ § 142 SGB III.

²⁴ § 138 SGB III.

Literature on social insurance coverage for German platform workers is very limited. Leimeister et al (2016a) discussed the future of German regulation on working conditions for platform workers, including provision of social protections. This study found that 66% of those engaged full-time as platform workers had health and unemployment insurance, and 53% had any kind of pension plan. This study, however, was limited to 463 German platform workers who exclusively perform online tasks.

Another framework that is relevant also for platform workers is the *Künstlersozialkasse* (KSK, Artist Social Fund), which is a framework for self-employed writers, publishers, and artists to receive obligatory social insurance. The KSK derives from the *Künstlersozialversicherungsgesetz* (KSVG, Artist Social Insurance Law) and was considered in the context of Work 4.0 in the discussions on providing obligatory insurance protections to self-employed platform workers. The Whitebook suggests that the KSK framework could be appropriate for those involved in creative undertakings (BMAS, 2016a). Solo self-employed writers, publishers, and artists earning more than €325 monthly can contribute a portion of their earnings (4.2% for 2018) to the KSK in exchange for obligatory social sickness, care, and pension insurance. Those earning more than the minimum income threshold (€4,425 monthly for 2018) can additionally choose between public and private health insurance plans. A key benefit of the KSK is that the *Arbeitgeberanteil* (employer portion of insurance contributions) is paid by the fund, meaning the worker is only responsible for the same contribution as an employee – approximately 53% of the total (Fair Crowd Work, 2017d; KSK, 2018). One German platform, content.de, collects and contributes the 4.2% of earnings to the KSK on behalf of platform workers (Sigge, 2014). This arrangement likely works as content.de largely intermediates creative writing tasks, and the KSK was designed to support self-employed writers, publishers, and artists. The Whitebook notes that adapting the KSK to cover all platform workers would require extensive revisions. Exactly what revisions that may entail is not discussed (BMAS, 2016a).

Another possible framework is the *Heimarbeitsgesetz*²⁵ (HAG, Home Work Law), which handles ‘industrial home work’ in the context of the International Labour Organization (ILO) classification.²⁶ The HAG provides legal protections to home workers, such as ensuring that wage is covered by collective agreement,²⁷ that home workers²⁸ are entitled to severance pay,²⁹ and that home workers have the assurance of safe working conditions.³⁰ While the HAG does not specify the employment status of home workers, the German Federal Labour Court has held that home workers are generally self-employed due to the absence of personal dependence.³¹ Thus, home workers are a group of self-employed that qualify for special legal protections. The Whitebook suggested updating the HAG so that platform workers could be defined as home workers,³² or providing a comparable protective framework for platform workers. However, the Whitebook does not explore this topic in further detail (BMAS, 2016a). Modifying the HAG to encompass platform work would likely require considerable

²⁵ See [Heimarbeitsgesetz in BGBI Teil III, Gliederungsnummer 804-1](#).

²⁶ See [ILO Convention No. 177 – Home Work Convention](#) (1996). In brief, ILO Convention 177 defines home work as work carried out by a person in their home or premises of their choice, for remuneration, resulting in a product or service as specified by the employer.

²⁷ § 17 Heimarbeitsgesetz.

²⁸ § 2 para. 1 Heimarbeitsgesetz.

²⁹ § 29 Heimarbeitsgesetz.

³⁰ § 12 Heimarbeitsgesetz.

³¹ [Bundesarbeitsgericht Urteil vom 24.8.2016, 7 AZR 342/14 ECLI:DE:BAG:2016:240816.U.7AZR342.14.0](#).

³² The definition of home worker is found in § 2 para. 1 Heimarbeitsgesetz.

changes. To name one issue, the HAG was developed for workers who manufacture, process, or pack goods in their own home or workplace of choice. Platform work, by contrast, concerns the performance of services.

Health and safety

The primary law on organisational health and safety is the *Arbeitsschutzgesetz* (ArbSchG, Occupational Health and Safety Act) (WHO, 2012). The ArbSchG sets out obligations of employers and applies to employees and employee-like persons. Among these obligations are providing appropriate training instructions and proper equipment for workers to perform their duties safely. Self-employed are not covered under this framework.³³ Accident insurance is mandatory for employees and employee-like persons, and is paid for entirely by the employer or contract-giver. Self-employed persons are not eligible for obligatory accident insurance, except where the competent accident insurer explicitly covers them through a provision in its statutes (European Commission, 2013). However, self-employed can voluntarily take out private accident insurance.

Two other health and safety considerations are noteworthy. First, the German government has commissioned research on working conditions for platform workers (BMAS, 2016a). Next, eight German platforms signed a Code of Conduct in 2017 that sets voluntary standards for safe working conditions and fair wages (as discussed below). This may indicate that the government is still in an information gathering phase, while some platforms are engaging in self-regulation.

Special taxation rules

All earnings from platform work activities are officially subject to taxation. Income in Germany is taxed at a rate from 0% (up to €8,354 for unmarried persons or €16,708 for jointly assessed married couples) to 45%, depending on gross income and having children (OECD, 2018).

While employees have income tax automatically deducted from their pay checks, self-employed must register as self-employed at the tax office within a month of beginning their self-employed activities. Thus, self-employed individuals (including self-employed platform workers) must fill out a questionnaire declaring their expected income for the current and following year, as well as estimated operating costs. Based on this information, the tax office determines whether a platform worker is subject to value-added tax (VAT) – which must be collected from clients. Self-employed platform workers must pay VAT if earning more than €17,500 annually through the secondary occupation (Fair Crowd Work, 2017d). Trade tax payments are not required unless one earns more than €24,500 annually through a trade (Fair Crowd Work, 2017d).

If platform work is a side activity (performed alongside employment, studies, or household work), earnings are considered *Nebenerwerb* (side earnings) and are subject to special regulations. Among these special regulations, secondary earnings must not create a conflict of interest with other employment. For example, a person may not be an employee of one company and make side earnings from a competitor company, or be employed as a doctor while making side earnings as a coroner. Collective agreements or employment contracts can stipulate reporting side earnings to the employer. An interviewed government representative noted that enforcing income tax payments is difficult – particularly when platforms operate from outside the EU.

³³ § 2 ArbSchG.

Litigation on platform work

The only surveyed German litigation specifically on platform work concerns transportation platforms.³⁴ These cases have generally concerned proper licensing, registration, and competition. In one such case, the Frankfurt District Court decided that UberPOP violated transportation regulations and could no longer operate in Germany (The New York Times, 2015). This overturned a ruling from September 2014 that had allowed UberPop to operate (The New York Times, 2014). At the European level, a case concerning Uber is pending at the Court of Justice of the European Union. The application was lodged on 19 June 2017 from the *Bundesgerichtshof* (Federal Supreme Court of Germany) (EU-OSHA, 2017). As of early 2018, no further information is available on this case.

Discussion on new or updated regulatory frameworks

Discussion on a comprehensive regulatory framework for platform work mostly took place in the context of Work 4.0 (BMAS, 2016a). According to an interviewed government representative, the German government favours a minimal approach, adapting existing legislation to platform work, rather than introducing completely new regulatory frameworks. The German government views this more modest approach as simple and sufficient to accommodate platform workers, while not stifling innovation. Furthermore, it avoids the difficulty of applying a single regulatory framework to a heterogeneous group of platforms, or developing a number of different specific frameworks.

In addition, German social partners *Deutsche Gewerkschaftsbund* (DGB, German Trade Union Confederation), *Ver.di Vereinte Dienstleistungsgewerkschaft*, United Service Workers Union), and the *Sozialverband Deutschland* (German Social Association) have suggested extending obligatory social insurance to everyone who earns income from work, regardless of employment status (Cheselina, 2017). This would separate social insurance eligibility from employment status. This solution has been previously discussed generally (Buchholz and Wiegard, 2013), particularly in the context of digitalisation (Tornau, 2016). The Whitebook also discusses including all ‘digital workers’ and solo self-employed in the obligatory pension insurance scheme (BMAS, 2016a).

Comparative overview of selected applicable regulatory frameworks

Under German law, employees are especially protected due to their dependence on employers, receiving the most comprehensive protections. However, both self-employed and the intermediate category of employee-like (explained in ‘Formal relationships’) receive a portion of these legal protections. Additionally, anti-discrimination and data protection laws apply to all workers equally. However, as noted by Wank (no date), the distinction between employed, employee-like, and self-employed – and how regulatory frameworks apply – is not always clear. Each of these categories represent heterogeneous groups that are marked by extensive case law and legal particularities.

Applicable regulatory frameworks are especially important as concerns insurance. For example, employees are marked by mandatory insurance, and employers are responsible for paying 47% of the fees for sickness, long-term care, and pension. Self-employed usually can voluntarily opt into these insurance schemes, but are responsible for 100% of the fees. Employee-like are treated like self-employed for insurance purposes, but receive the same treatment as employees for pension and accident insurance (Ales et al, 2017).

³⁴ Exemplary court cases include: 1) [Oberlandesgericht \(OLG\) Frankfurt, 09.06.2016 - 6 U 73/15](#); 2) [Kammergericht: Einsatz von UBER Black wettbewerbswidrig \(PM 62/2015\)](#); 3) [LG Hamburg, 23.12.2016 - 315 O 423/15](#).

In other cases, the application of regulatory frameworks is less straight forward. For example, employees have limited liability for damages to the employer and third parties. Whether this also applies to employee-like workers is under discussion, but not clear (Waas, 2017).

Formal relationships

The scope of this section are the formal relationships between clients, platform workers, and platforms. Because of the heterogeneity of platforms, a great number of variations exist, and exhaustively covering all existing or potential relationships for all platforms is not feasible. The most important types of relationships, based on the literature and expert interviews, will be discussed.

Relationships are contractually determined, usually by the general terms and conditions of the platform (Deutscher Bundestag, 2015), which the platform worker must accept to begin working. If a platform is based outside Germany, German regulations on general terms and conditions of business cannot be applied (Däubler, 2015b). Alternatively, relationships can be determined by a contract generated upon posting or accepting a task. The primary exception to these scenarios is when a platform utilises an *Arbeitsvertrag* (employment contract) to determine its relationship with platform workers.

The formal relationships between platform worker and platform, and platform worker and client, are discussed by authors including Däubler (2015a; 2015b; 2016a; 2016b) and Klebe (2014; 2015). Contrarily, relationships between the client and platform appear to be much less covered. Client and platform relationships are usually mentioned anecdotally within discussions on platforms' general terms and conditions, or consumer protections in the broad context of digitalisation.

The formal relationships between platform worker and client, and platform worker and platform, are inextricably linked to employment status. This is part of a core debate of platform work – whether it is appropriate to consider platform workers as self-employed, or if platform workers should be considered employees of the platform or client (Klebe, 2014; Däubler, 2016a; Greiner, 2016; Selzer, 2016). Platform work bears characteristics of both employment and self-employment, and establishing employment status for platform workers remains a challenge in German law (Welskop-Deffaa, 2016). Employment status is particularly relevant because it helps determine which labour laws apply, as well as which social protections are obligatory.³⁵

Potential employment statuses under German law

German law contains the employment statuses of *Arbeitnehmer* (employee), *Selbstständiger* (self-employed), and an intermediate category of *arbeitnehmerähnliche Person* (employee-like person). Neither the term *Arbeitgeber* (employer) nor employee are legally defined under German civil law (Hümmerich et al, 2010). For that reason, working definitions of employee and employer derive from the rulings of the *Bundesarbeitsgericht* (BAG, German Federal Labour Court). The BAG defines an employer as a person who is entitled to demand work from an employee by virtue of an *Arbeitsvertrag* (contract of employment).³⁶ The BAG defines an employee as a person who, by virtue of a contract under private law, provides instruction-bound, externally-determined work, in personal dependence, for payment (Lingemann et al, 2016).³⁷ German courts must individually assess cases to determine whether a person is an employee in case of disputes. In practice, courts determine the existence of an employment relationship by testing for personal dependence at the request of

³⁵ As discussed above.

³⁶ BAG 9. September 1982 – 2 AZR 253/80 – AP § 611 BGB Hausmeister no. 1.

³⁷ BAG 13. March 2008 – 2 AZR 1037/06 – NZA 2008, 878.

the worker or employer. Typical criteria for establishing personal dependence include the duty to comply with instructions; the inability to determine one's own time, place, and content of work; incorporation into the employer's organisation; and the use of the employer's equipment (Eurofound, 2002; Schäfer, 2015).

Criteria for self-employment include the establishment of a company, the ability to hire a workforce, taking entrepreneurial risk, and the freedom to determine what activities to undertake and in which timeframe.³⁸ Self-employment refers to individuals without employees, as well as entrepreneurs who hire employees (Ortlieb and Weiss, 2015). *Solo-Selbstständigkeit* (literally 'solo self-employment', but also meaning 'freelance') refers to an individual who is self-employed and does not have any subordinate employees (BMAS, 2016a; Ortlieb and Weiss, 2015). Approximately 57% of the self-employed in Germany are solo self-employed (Brenke, 2013).

Employee-like status applies to persons who are personally independent like self-employed, but economically dependent like employees.³⁹ Legally, employee-like persons are a sub-category of self-employed (Waas, 2017). Due to their economic dependence, employee-like persons have a special 'need for social protection' comparable to that of employees (Selzer, 2015). Examples of economically dependent persons include home workers as defined by the *Heimarbeitsgesetz* (HAG, Home Work Law), artists and publishers as defined by the *Künstlersozialversicherungsgesetz* (KSVG, Artist Social Insurance Law),⁴⁰ and people who permanently receive assignments by essentially a single contract-giver.⁴¹

If no employment status exists, an individual is either unemployed (not working but seeking a job) or economically inactive (not working and not seeking a job) (Eurostat, 2017). Examples of economically inactive individuals include young children, pensioners, and people who are incapacitated for work.

Relationships among the three involved parties

In many cases, the general terms and conditions of use (GTAC) of the platform determine the relationships between all parties. German platforms usually specify that a platform worker accepts a solo self-employment status for themselves by agreeing to the GTAC (Fair Crowd Work, 2017d). This view was also voiced by employee organisation representatives in the interviews. The implication is that a platform worker and platform do not necessarily have any legal relationship. The platform worker simply uses the platform as an intermediation tool to reach clients, and any use of the platform is subject to the rules set by the GTAC.

The specific arrangement of work provision and remuneration can be made between the platform worker and client, or the platform worker and platform. Most frequently, this takes place with a *Werkvertrag* (work contract) or *Dienstvertrag* (service contract). Under these contracts, the parties are the *Auftraggeber* (literally task-giver) and *Auftragnehmer* (literally task-taker, or approximately contractor). Either client or platform can be the task-giver, while the platform worker is the task-taker. If a platform worker accepts tasks intermediated by work contracts or service contracts, they are considered self-employed (Deutscher Bundestag, 2015). However, the platform worker may be considered economically dependent on the platform, in which case the platform worker is employee-like.

The main difference between work and service contracts is that work contracts stipulate the delivery of successfully completed work for payment, whereas a service contract only

³⁸ [Sozialgericht Dortmund S 34 R 580/13 21.03.2014.](#)

³⁹ § 2 sent. 1 no. 9 SGB VI.

⁴⁰ The HAG and KSVG are explored above.

⁴¹ § 2 Selbständig Tätige, SGB IV.

specifies performing a service dutifully in exchange for payment (Deutscher Bundestag, 2015). With work contracts, the task-giver determines whether the work has been successfully completed and payment is due. Work and service contracts both give the task-taker significant freedom over the time, place, and manner in which a service is performed (Deutscher Bundestag, 2015). As examples, accepting a data entry task on Clickworker, in which a completed database must be delivered to the client, would be an example of a work contract.⁴² A service contract might include accepting a task on Upwork, in which one must moderate a web forum for a period of time (Fair Crowd Work, 2017d).

Thus, in one type of arrangement, the platform worker and platform are bound by the GTAC, while the platform worker and client are bound by a work contract or service contract. For example, consider AMT (Amazon Mechanical Turk – a popular US micro-tasking platform). Clients can post tasks to an online marketplace, where platform workers choose tasks to complete. Platform workers deliver the final product to the client, and the client reviews the results – approving or rejecting them, and paying the platform worker upon approval. AMT charges the client a percentage of the fee levied for each task (Silberman and Irani, 2016). Because payment is contingent on concrete ‘success’ as determined by the client, this would be a case where a platform worker is agreeing to a work contract with the client.⁴³ As stated in AMT’s general terms and conditions, the website merely provides: ‘... a venue for Requesters and Workers to conduct transactions’, and AMT is: ‘... not responsible for resolving any disputes between participants related to any Tasks or any transaction’ (AMT, 2017).

In other arrangements, the platform worker and platform are bound by a work contract or service contract. With Crowd Guru, clients cannot directly post jobs to the platform website. Instead, clients communicate with an employee of the platform, who is a part-time or full-time project manager. The client explains what work they need performed and provides any necessary materials, such as data. The platform employee then proceeds to break up the task into micro-tasks to be distributed via the website’s marketplace (Fair Crowd Work, 2017b). Platform workers for Crowd Guru have no relationship (or even contact) with the client, but upon accepting a task, become bound by a work contract with the platform (Crowd Guru, 2018a; 2018b). These two examples capture the most frequent cases.

In a minority of cases, an *Arbeitsvertrag* (employment contract) establishes the platform worker as an employee and the platform as an employer (Fair Crowd Work, 2017d). Two illustrative examples are BOOK A TIGER (BOOK A TIGER, 2018), a cleaning service, and Foodora (Die Zeit, 2017), a food delivery service that utilises bicycle couriers. No examples of employed platform workers were found for online delivered tasks. One interviewed employee organisation representative stated that in cases where platforms have formally employed their workers, it is because the platforms opted to do so after a period of using self-employment contracts – sometimes as a response to trade union pressure.

The client’s relationship with platforms is hardly covered in German literature, and virtually all discussion is anecdotal. The only examples found focused on *Verbraucherschutz* (consumer protection) in the broad context of digitalisation, which includes use of social media platforms, communication platforms, and online marketplaces such as Amazon.⁴⁴ It

⁴² §3.2 of the [General terms and conditions \(Clickworkers\)](#).

⁴³ While AMT’s general terms and conditions are written for a US legal context, it is relevant as German platform workers are active on the platform. Moreover, AMT tasks function similarly as those defined by German work contracts. See § 631 para. 1 BGB. ‘*Durch den Werkvertrag wird der Unternehmer zur Herstellung des versprochenen Werkes, der Besteller zur Entrichtung der vereinbarten Vergütung verpflichtet*’ (Through the work contract, the entrepreneur is required to produce the promised work, and the one who ordered the work is required to pay the agreed remuneration).

⁴⁴ See, for example, Schweitzer et al (2016) and Verbraucherzentrale Bundesverband e.V. (2016).

does not appear that the German government has paid special attention to clients in platform work. Further discussion may take place in the context of the forthcoming EU-GDPR (European Union General Data Protection Regulation), as this legislation will also target data protection for consumers.

Other contractual relationships

Other contracts may be relevant for the relationships between platform workers, clients, and platforms (Fair Crowd Work, 2017d). These include the *Kaufvertrag*⁴⁵ (approximately ‘sale of goods contract’), *Fernabsatzvertrag*⁴⁶ (literally ‘distance selling contract’), or *Urhebervertrag*⁴⁷ (literally ‘copyright contract’). However, these contracts are less relevant in comparison to work and service contracts (Fair Crowd Work, 2017d). Of these three contract types, only copyright contracts seems to have been discussed in literature in relation to platform work (for example Deutscher Bundestag, 2015). The Deutscher Bundestag (2015) only makes a few points on this topic. First, platform workers legally own the usage rights of their works unless their contract states otherwise. For example, platform workers for Clickworker agree to transfer their usage rights in exchange for remuneration. Second, in some circumstances, creative workers may choose not to assert their copyrights due to high legal costs (Deutscher Bundestag, 2015).

Discussion on formal relationships

As was indicated above, formal relationships are often determined by the GTAC, which is problematic on several fronts. GTAC are often worded vaguely and ambiguously (Prassl, 2016). Partly owing to the ambiguous wording, the German government has noted that the GTAC of platforms have raised legal questions, such as which labour protections apply to German platform workers, and when German jurisdiction applies to platform work activities for platforms located outside of Germany or the EU (Deutscher Bundestag, 2015). Furthermore, the German government has noted that the unilateral ability of platforms to dictate contracts has the potential to violate the rights of platform workers (Deutscher Bundestag, 2015).

Additionally, the GTAC can reflect the conflicting motivations of German platforms, as indicated by one interviewed academic and one interviewed employee organisation representative. Platforms often attempt to have ‘the best of both worlds’: avoiding the costs and responsibilities of being an employer (through relying on self-employed individuals for labour), while ensuring standardised and high quality service by exercising control over platform workers (as is typical of an employment relationship). For example, although Deliveroo couriers are not always employees, they are required to wear a uniform. Micro-tasking platform CrowdFlower forbids automating any tasks (CrowdFlower, 2015). 99designs, which intermediates creative work such as graphic creation, obliges platform workers to conduct all subsequent commissions and communications with a specific client through the platform for the next two years, once a worker found a client through the platform. Designers can only get out of this clause by paying the platform USD 2,500 (approximately €2,040) (Schmidt, 2015). It is not clear how such control mechanisms can be enforced.

Employment status of platform workers remains contentious (Chesalina, 2017). First, bogus self-employment of platform workers is a topic of discussion in Germany. Social partners have noted their concern for the accurate designation of self-employed status, both in official

⁴⁵ § 433-453 BGB.

⁴⁶ § 312 BGB.

⁴⁷ Urheberrechtsgesetz, 9 September 1965: Bundesgesetzblatt (BGBl) pt. 1 sect. 1273.

documents (IG Metall, 2017) and expert interviews. The Whitebook of Work 4.0 also discusses the need to prevent and address situations of bogus self-employment, which would help ensure that appropriate regulatory frameworks apply to platform workers (BMAS, 2016a). In this regard, the determination of personal dependence is key. A few German scholars have discussed when platform workers could meet criteria for personal dependence on a platform, and thus be classified as an employee. For example, Selzer (2016) and Kocher and Hensel (2016) write that if a platform specifies the timeframe in which a task must be completed, it is indicative of personal dependency, but not necessarily sufficient to prove it.

Second, in some cases, concern for employment status designation may discourage platforms from providing benefits to employees. The German Federal Labour Court has held that criteria for distinguishing employees from self-employed include the provision of paid sick leave and paid vacation (Deutscher Bundestag, 2015). Thus, platforms offering these benefits to platform workers could be formally considered to be employers.

Lastly, the intermediate employment status of employee-like persons could also be applied to German platform workers (BMAS, 2016a). Still, it is generally difficult for platform workers to meet the strict criteria for economic dependency, and no court cases have been found specifically considering whether platform workers can be considered employee-like. As noted, workers who permanently receive all assignments from essentially a single contract-giver qualify as employee-like. If a platform is merely an intermediary, a platform worker would need to receive all assignments from a single client to be considered economically dependent. If a platform is a task-giver, platform workers would need to receive essentially all tasks from a single platform. This may be difficult, as more than 33% of German platform workers work on multiple platforms (Leimeister et al, 2016a). As such, social partners including the trade union Ver.di have advocated broadening the category of employee-like workers so that more platform workers can become eligible (Chesalina, 2017). In practice, this may include changing the requirement that employee-like individuals directly receive all contracts from a single contract-giver.⁴⁸ Such a suggestion was also put forward by the German Jurists Forum in 2010 (DJT, 2010). This indicates that even prior to the rise of platform work, some viewed the legal distinction between self-employed and employee-like persons as needing revision.

Organisation and representation in platform work

Germany's system of industrial relations formed in the post-World War II period, and centres on depoliticising industrial relations and removing conflict from the workplace. The most characteristic features are the dual system of interest representation and co-determination. Most bargaining takes place at the sector level between employee organisations and employer organisations, and most negotiations take place at the regional or federal state levels (Kraemer, 2008).

The legal basis for organisation and representation is labour law, which covers the relationship between collective parties – the employer, employers' organisations, works councils, and trade unions (Kirchner and Morgenroth, 2017). The *Betriebsverfassungsgesetz* (BetrVG, Works Constitution Act) stipulates information sharing, consultation, and co-determination between works councils and supervisory boards. *Betriebsräte* (works councils) act as the main workplace employee representation bodies, which can form when a company has at least five employees. Companies with at least 500 employees must establish an *Aufsichtsrat* (supervisory board). If an agreement cannot be reached between works councils and supervisory boards on operational changes, a conciliation board must be created with a neutral chair appointed by a labour court.

⁴⁸ § 2 sent. 1 no. 9 SGB VI.

Organisation of platform workers

Organisation in platform work presents considerable difficulties (Kilhoffer et al, 2017). According to interviewed employee organisation representatives, platform workers are not usually physically present at a single workplace, may not consider themselves workers, may not share a common identity, and frequently enter and exit employment. These practical difficulties are especially relevant for online platform workers. There are also legal complications with organising self-employed workers, such as cartel law and competition law (BMAS, 2016a). The legal issues of platform worker organisation are addressed at length by Klebe (2015), but stated briefly, interest representation is legally possible when the work is performed within Germany, even when a platform is located outside of German borders (Däubler, 2016a). Solo self-employed in Germany, including platform workers, can be represented by trade unions, trade associations, or both. However, most trade unions only accept employees (Eurofound, 2017). Cooperative movements are also possible (BMAS, 2016a), but have not played a significant role for German platform workers.

Despite legal and practical challenges, organisation and representation in platform work seem to be growing in Germany. Trade unions have been very active in platform work issues by holding discussions, releasing publications, negotiating with platforms, and providing advice to platform workers (EU-OSHA, 2017). Platform workers are also increasingly organised. According to one study, two-thirds of surveyed German platform workers expressed the importance of unions for improving their working conditions (Al-Ani and Stumpp, 2015).

IG Metall (*Industriegewerkschaft Metall*, Industrial Union of Metal Workers), the largest industrial trade union in Europe, has been exceptionally active in platform worker issues. At the beginning of 2016, IG Metall changed its statutes to allow self-employed to become members. This decision was part of a strategy to increase membership and adapt to a changing labour market; self-employed is a growing demographic in Germany, while the proportion of employees is shrinking (Fritsch et al, 2015). According to an interviewed employee organisation representative, IG Metall launched a project in early 2016 to engage online platform workers. Unlike the US context, where large platforms (for example Uber) have more sway than clients and platform workers, it is often the case that large and influential German firms, rather than individuals, purchase services from platforms. Because of the scale of these contracts, German firms have a great amount of leverage over platforms. IG Metall became aware that large German firms could pit platforms against one another to lower their prices, with the ultimate effect of driving down wages for platform workers. So, in addition to organising platform workers, IG Metall has engaged with platforms and large German firms with the intention of preventing a race to the bottom. Further details of these engagements are not publicly available.

IG Metall has supported several specific initiatives for German and international platform workers. In 2016, IG Metall launched Fair Crowd Work: a type of watchdog organisation run in collaboration with Austrian and Swedish trade unions. Fair Crowd Work collects information about platforms and produces a rating system based on the platforms' terms and conditions and worker reviews for online platforms. Additionally, Fair Crowd Work informs platform workers on their legal rights in accessible language, and lists trade unions they can join (Fair Crowd Work, 2017d). Lastly, in December 2016, IG Metall joined other trade unions from the US and Europe to assist Munich-based platform Testbirds in drafting the Frankfurt Declaration (Fair Crowd Work, 2016). The Frankfurt Declaration states a number of prerequisites for fair platform work, such as minimum income, the ability to achieve self-sufficiency with 35-40 hours of work per week, an affordable means to healthcare, provisions for work-related accidents and illness, pension, freedom from discrimination and abuse, and rights to organise and take part in collective agreements. While an interviewed German government representative viewed the Frankfurt Declaration and Fair Crowd Work positively, IG Metall has emphasised its position that formal government regulation is still needed to ensure a level playing field for all workers (IG Metall, 2017).

Ver.di, another major German union, has taken a proactive approach to platform work. Since its inception, Ver.di has allowed self-employed to become members. As of 2018, some 30,000 self-employed are members, of which an unspecified number are platform workers. According to an interviewed representative, upon hearing concerns from its members related to fair pay through platform work, Ver.di took a more active role in facilitating dialogue between platform workers and platforms. Ver.di also supported research with academic institutions like the University of Kassel to examine platform work in Germany. In comparison to IG Metall, Ver.di has focused on physical platform work. From Ver.di's perspective, these physical workers are a particularly pressing concern as physical platform work is much more likely to be done frequently, and much more likely to constitute a considerable portion of an individual's income. However, no large scale surveys have definitively shown the proportion of German workers engaged in different types of platform work, or the likelihood of earning a substantial portion of their income through a given type of platform.

Another large German trade union, IG BAU (*Industrielle Gewerkschaft Bauen-Agrar-Umwelt*, Trade Union of Construction, Agriculture, and Environment) has also cooperated with German platform workers to some extent. IG BAU negotiations resulted in a collective agreement affecting the 600,000 German cleaners employed by firms. As cleaners using platforms like BOOK A TIGER and Helpling are employees, the collective agreements negotiated by IG BAU apply to such platform workers (Die Zeit, 2017). While BOOK A TIGER and Helpling must abide by sectoral agreements, no evidence was found to suggest that platforms directly took part in the sectoral negotiations.

Smaller trade unions are also active in platform work issues on behalf of bicycle couriers. For example, FAU (*Freie Arbeiterinnen- und Arbeiter-Union*, Free Workers Union) has supported couriers for Deliveroo and Foodora in negotiations for better pay and working conditions (FAU, 2016). Similarly, NGG (*Gewerkschaft Nahrung-Genuss-Gaststätten*, Food, Beverages and Catering Union) negotiated and concluded an agreement with Foodora regarding working conditions and pay for couriers in Cologne. NGG additionally assisted a number of Foodora couriers in forming a works council (Die Welt, 2018; Der Freitag, 2017). While evidence exists for small trade unions engaging both platforms and platform workers, few specific details are available as of early 2018.

Finally, platform workers have held demonstrations in Germany. These protests concerned Foodora and Deliveroo couriers' desire for better pay and working conditions, and were assisted by the FAU (The Local, 2017). With the exception of Berlin couriers, no strikes or collective actions are known.

Organisation of platforms

Traditional employer organisations – the BDA (*Bundesvereinigung der Deutschen Arbeitgeberverbände*, German Confederation of Employers' Associations) and BDI (*Bundesverband der Deutschen Industrie*, Federation of German Industries) – have not taken a great interest in platform work. According to an interview with an employer organisation representative, employer organisations have not sought to incorporate platforms, as platforms are not typically considered employers. This may be due to the new development of the platform economy, because platforms primarily see each other as competitors, or because platforms do not view themselves as employers (Kilhoffer et al, 2017).

Only one instance of a platform organisation was found for Germany: the *Deutscher Crowdsourcing Verband* (German Crowdsourcing Association).⁴⁹ The German

⁴⁹ 'Crowdsourcing' in this context is understood as outsourcing tasks via an open call online (a form of online platform work).

Crowdsourcing Association was started by Munich-based software testing platform Testbirds, and as of early 2018 includes seven additional platforms. Each member platform intermediates some sort of online platform work activity, such as micro tasks, software testing, and programming. According to an interviewed employee organisation representative, the German Crowdsourcing Association was motivated by the exploitative practices of some platforms, and the thereof resulting poor perception of platforms in Germany.

The German Crowdsourcing Association has bound itself to self-regulation principles in the Crowdsourcing Code of Conduct. It aims to promote fair and trusting collaboration between platforms and platform workers, setting a framework covering 10 fields of interest: lawfulness of task; clarification of the legal framework; fair pay; ‘motivating and good’ work; respectful conduct; clear task definitions and appropriate time planning; freedom and flexibility; constructive feedback and open communication; rule-based process to reject completed work and request rework; and data privacy and the private sphere (Deutscher Crowdsourcing Verband, 2017). Beyond a voluntary agreement, the Code of Conduct resulted in a dispute settlement mechanism in November 2017, when the German Crowdsourcing Association established a joint Ombuds Office with assistance from IG Metall. The purpose of the Ombuds Office is to resolve grievances and find resolutions for platform workers who work through one of the signatory platforms, and believe that the platform does not follow the standards agreed in the Code of Conduct (Fair Crowd Work, 2017e). The Ombuds Office board is chaired by Frankfurt labour judge Dr. Silke Kohlschitter, and the rest of the board is comprised of representatives of platforms and platform workers. Due to its recent inception, it is not yet clear what impact the Ombuds Office will have for German platforms and platform workers. However, as of early 2018, the Ombuds Office has received nine complaints. Eight have already been successfully resolved by consensus, while one is still pending (Silberman, 2018).

References

All Eurofound publications are available at www.eurofound.europa.eu

- Al-Ani, A. and Stumpp, S. (2015), *Motivationen und Durchsetzung von Interessen auf kommerziellen Plattformen. Ergebnisse einer Umfrage unter Kreativ- und IT-Crowdworkern*, Ales, E. (2017), *Core and Contingent Work in the European Union*, Hart Publishing, Portland, USA.
- Alexander von Humboldt Institut für Internet und Gesellschaft, Berlin.
- Amazon Mechanical Turk (AMT) (2017), ‘Amazon Mechanical Turk Participation Agreement’, available at <https://www.mturk.com/worker/participation-agreement>.
- Bayreuther, F. (2017), ‘Entgeltsicherung Selbständiger’, *Neue Juristische Wochenschrift*, Vol. 70, No. 6, pp. 357–361.
- BDA (2015), *Seize the opportunities of digitisation / BDA position on the digitisation of business and the working world*, Bundesvereinigung der Deutschen Arbeitgeberverbände (BDA), Berlin.
- Bertschek, I., J. Ohnemus and S. Viète (2016), *Befragung zum sozioökonomischen Hintergrund und zu den Motiven von Crowdworkern*, Bundesministerium für Arbeit und Soziales, Berlin.
- Blum, S. and Erler, D. (2013), ‘Germany country note’, in Moss, P. (ed.), *International Review of Leave Policies and Research*, London.
- BOOK A TIGER (2018), ‘BOOK A TIGER’, available at <https://www.bookatiger.com/de-de/about>.
- Brenke, K. (2013), ‘Allein tätige Selbständige : starkes Beschäftigungswachstum, oft nur geringe Einkommen’, *DIW Wochenbericht*, No. 7, pp. 3–16.
- Brose, W. (2017), ‘Von Bismarck zu Crowdwork: Über die Reichweite der Sozialversicherungspflicht in der digitalen Arbeitswelt’, *Neue Zeitschrift für Sozialrecht*, Vol. 1, pp. 7–14.
- Buchholz, W. and W. Wiegard (2013), *Wer Finanziert den deutschen Sozialstaat in Zukunft? Beiträge, Steuern und Privatisierung der Risiken*, Bundesministerium für Arbeit und Soziales, Köln.
- Bundesministerium für Arbeit und Soziales (BMAS) (2016a), *Weißbuch / Arbeiten 4.0*, Bundesministerium für Arbeit und Soziales, Berlin.
- Bundesministerium für Arbeit und Soziales (BMAS) (2016b), *Nutzung von Crowdworking durch Unternehmen: Ergebnisse einer ZEW-Unternehmensbefragung*, Bundesministerium für Arbeit und Soziales, Berlin.
- Cheselina, O. (2017), *Platform Economy as a Challenge for Social Security in Germany*, Max Planck Institute for Social Law and Social Policy, Munich.
- Crowd Guru (2018a), ‘Crowd Guru - FAQ’, available at <https://www.crowdguru.de/guru-faq>.
- Crowd Guru (2018b), ‘Geschäftsbedingungen für Gurus der Crowd Guru GmbH’, available at https://registration.crowdguru.de/bundles/crowdgururegister/files/agb_crowdguru.pdf.
- CrowdFlower (2015), ‘CrowdFlower Master Terms of Service’, available at <https://www.crowdfLOWER.com/legal>.
- Däubler, W. (1999), ‘Working People in Germany’, *Comparative Labor Law & Policy Journal*, Vol. 77, No. 77–78.
- Däubler, W. (2015a), ‘Crowdworker - Schutz auch außerhalb des Arbeitsrechts. Eine Bestandsaufnahme’, in Benner, C. (ed.), *Crowdwork - Zurück in die Zukunft? Perspektiven digitaler Arbeit*, Bund-Verlag, Frankfurt.
- Däubler, W. (2015b), *Internet und Arbeitsrecht*, Bund Verlag, Frankfurt.

- Däubler, W. (2016a), ‘Crowdwork – Arbeit der Zukunft?’, Forum InformatikerInnen für Frieden und gesellschaftliche Verantwortung e.V., Bremen.
- Däubler, W. (2016b), *Digitalisierung und Arbeitsrecht*, Bund-Verlag, Berlin.
- De Groen, W.P. et al (2017), ‘The Impact of the Platform Economy on Job Creation’, *Intereconomics*, Vol. 52, No. 6, pp. 345–351.
- Deinert, O. (2015), ‘Soloselbstständige zwischen Arbeitsrecht und Wirtschaftsrecht’, *Nomos*, Vol. 137.
- Der Freitag* (2017), ‘Lieferservice - Kollaps der Pizzaboten’, 6 July.
- Deutscher Bundestag (2015), *Rechtsfragen zum Crowdsourcing*, Deutscher Bundestag, Berlin.
- Deutscher Crowdsourcing Verband (2017), *Crowdsourcing Code of Conduct*, Deutscher Crowdsourcing Verband, Munich.
- Die Welt* (2018), ‘Deliveroo: Fahrer gründen Betriebsrat in Köln’, 24 January.
- Die Zeit* (2017), ‘Tarife: IG BAU dringt auf Ost-West-Angleichung für Gebäudereiniger’, 5 November.
- DJT (Deutscher Juristentag) (2010), *Beschlüsse des 68. Deutschen Juristentages Berlin 2010*, DJT, Berlin.
- EU-OSHA (2017), *Regulating the occupational safety and health impact of the online platform economy - Safety and health at work*, EU-OSHA, Bilbao.
- Eurofound (2002), ‘Economically dependent workers’, *employment law and industrial relations*, Eurofound, Dublin.
- Eurofound (2015), *New Forms of Employment*, Publications Office of the European Union, Luxembourg.
- Eurofound (2017), *Germany: Self-employed workers*, Eurofound, Dublin.
- Eurofound (2018 - forthcoming), *Digital age: Employment and working conditions of selected types of platform work*, Publications Office of the European Union, Luxembourg.
- European Commission (2013), *Your social security rights in Germany*, Publications Office of the European Union, Luxembourg.
- European Commission (2016), *Flash Eurobarometer 438: The use of collaborative platforms*, Directorate-General for Communication, Brussels.
- European Space Agency (2013), *Microjobbing by satnav smartphone*, European Space Agency, Paris.
- Eurostat (2017), ‘People outside the labour market - Statistics Explained’, available at http://ec.europa.eu/eurostat/statistics-explained/index.php/People_outside_the_labour_market.
- Fair Crowd Work (2016), *Frankfurter Erklärung zu plattformbasierter Arbeit / Vorschläge für Plattformbetreiber, Kunden, politische Entscheidungsträger, Beschäftigte und Arbeitnehmerorganisationen*, IG Metall, Frankfurt.
- Fair Crowd Work (2017a), ‘AppJobber’, available at <http://faircrowd.work/platform/appjobber/>.
- Fair Crowd Work (2017b), ‘Crowd Guru’, available at <http://faircrowd.work/platform/crowd-guru/>.
- Fair Crowd Work (2017c), ‘Fair Crowd Work - Shedding light on the real work of crowd-, platform-, and app-based work’, available at <http://faircrowd.work/>.
- Fair Crowd Work (2017d), ‘Kennensie Ihre Rechte?’, available at <http://faircrowd.work/de/unions-for-crowdworkers/know-your-rights/>.

- Fair Crowd Work (2017e), ‘Ombuds Office for German crowdsourcing platforms established’, available at <http://faircrowd.work/2017/11/08/ombudsstelle-fuer-crowdworking-plattformen-vereinbart/>.
- FAU (Freie Arbeiterinnen- und Arbeiter-Union) (2016), ‘Basisgewerkschaften starten internationale Lieferdienst-Kampagne #deliverunion’, available at https://www.fau.org/artikel/art_161227-133014.
- Greiner, S. (2016), ‘Die Vielfalt moderner Arbeitsformen im Sozialrecht’, *Die Sozialgerichtsbarkeit*, Vol. 6, pp. 301–309.
- Hümmerich et al (2010), *Nomos Kommentar Arbeitsrecht, 2. Auflage 2010*, Nomos Verlag, Baden.
- Huws, U., Spencer, N.H. and Joyce, S. (2016), *Crowd work in Europe: Preliminary results from a survey in the UK, Sweden, Germany, Austria and the Netherlands*, European Foundation for Progressive Studies, Brussels.
- IG Metall (2017), *Begrüßenswertes Entwicklung im Crowdsourcing*, IG Metall, Frankfurt.
- Ilsoe, A. (2017), ‘The digitalisation of service work – social partner responses in Denmark, Sweden and Germany’, *Transfer: European Review of Labour and Research*, Vol. 23, No. 3, pp. 333-348.
- Joboption Berlin (2016), *Faire Arbeit in der Crowd | Gestaltungsfelder guter Arbeitsbedingungen*, ArbeitGestalten, Berlin.
- Kawalec, S. and Menz, W. (2013), ‘Die Verflüssigung von Arbeit | Crowdsourcing als unternehmerische Reorganisationsstrategie – das Beispiel IBM’, *Arbeits- und Industriosozilogische Studien*, Vol. 6, No. 2, pp. 5–23.
- Kilhoffer, Z., K. Lenaerts and M. Beblavý (2017), *The Platform Economy and Industrial Relations: Applying the Old Framework to the New Reality*, CEPS, Brussels.
- Klebe, T. (2014), ‘Crowdsourcing: Für eine handvoll Dollar oder Workers of the crowd unite?’, *Arbeit und Recht*, Vol. 62, No. 1, pp. 4–7.
- Klebe, T. (2015), ‘Workers of the crowd unite- Betriebsratsrechte bei Crowdsourcing’, in Benner, C. (ed.), *Crowdwork - Zurück in die Zukunft? Perspektiven digitaler Arbeit*, Bund-Verlag, Frankfurt.
- Kocher, E. and Hensel I. (2016), ‘Herausforderungen des Arbeitsrechts durch digitale Plattformen – ein neuer Koordinationsmodus von Erwerbsarbeit’, *Neue Zeitschrift fuer Arbeitsrecht*, Vol. 16, pp. 984–990.
- Kraemer, B. (2008), *Germany: Industrial Relations Profile*, Institute of Economic and Social Research, Bonn.
- Künstlersozialkasse (KSK) (2018), ‘KSK in Zahlen’, available at <http://www.kuenstlersozialkasse.de/service/ksk-in-zahlen.html>.
- Leimester, J.M. et al (2016a), *Systematisierung und Analyse von Crowdsourcing-Anbietern und Crowd-Work-Projekten*, Hans-Böckler-Stiftung, Düsseldorf.
- Leimester, J.M., D. Durward and S. Zogaj (2016b), *Crowd Worker in Deutschland | Eine empirische Studie zum Arbeitsumfeld auf externen Crowdsourcing-Plattformen*, Hans-Böckler-Stiftung, Düsseldorf.
- Lenaerts, K., Beblavý, M. and Kilhoffer, Z. (2017), *Government Responses to the Platform Economy: Where do we stand?*, CEPS, Brussels.
- Lingemann, S., R. von Steinau-Steinrück and A. Mengel (2016), *Employment & Labor Law in Germany*, Beck Verlag, Munich.
- Mecke, C. (2016), ‘Schöne neue sozialversicherungsfrei Arbeitswelt?’, *Die Sozialgerichtsbarkeit*, Vol. 9, pp. 481–488.

- Mrass, V., Li, M.M. and Peters, C. (2017), 'Towards a Taxonomy of Digital Work | Research in Progress', *25th European Conference on Information Systems (ECIS)*, 5-10 June, Guimarães, Portugal.
- Mrass, V. and C. Peters (2017), *Crowdworking-Plattformen in Deutschland*, University of Kassel, Kassel.
- OECD (2018), *Taxing Wages – Germany*, OECD Centre for Tax Policy and Administration, Paris.
- Paulo, T.S. (2017), *Our Top Testers talk Crowdworking with IG Metall*, Testbirds, Munich.
- Pfeiffer, S. (2015), *Schriftliche Stellungnahme zum öffentlichen Fachgespräch des Ausschusses Digitale Agenda am Mittwoch, dem 30. September 2015*, Deutscher Bundestag, Berlin.
- Prassl, J. (2016), 'Flexible Arbeitsverpflichtung, Legitimierte Ausbeutung? Der 'Zero-Hours Contract' im Englischen Recht', in Tomandl, T. and Risak, M. (eds), *Wie bewältigt das Recht Moderne Formen der Arbeit?*, New Academic Press, Vienna
- Riedel, C. and Welskop-Deffaa, E. (2016), 'Heute die Rente von morgen sichern', *Zeitschrift des Deutschen Juristinnenbundes*, No. 2, pp. 75–78.
- Schäfer, I. (2015), 'Independent contractor or employee – That is the question', available at <http://blogs.dlapiper.com/employmentgermany/2015/04/02/independent-contractor-or-employee-that-is-the-question>.
- Schmidt, F.A. (2015), *The Design of Creative Crowdwork | From Tools for Empowerment to Platform Capitalism*, PhD thesis, Royal College of Art, London.
- Schmidt, F.A. (2017), *Arbeitsmärkte in der Plattformökonomie – Zur Funktionsweise und den Herausforderungen von Crowdwork und Gigwork*, Friedrich Ebert Stiftung, Bonn.
- Schmidt, F.A. (2017b), 'Digital Labour Markets in the Platform Economy: Mapping the Political Challenges of Crowd Work and Gig Work'.
- Schmidt, F.A. and Kathmann, U. (2017), *Der Job als Gig | Digital vermittelte Dienstleistungen in Berlin*, JobOption, Berlin.
- Selzer, D. (2015), 'Crowdworking - Arbeitsrecht Zwischen Theorie und Praxis', in Husemann, T. and Wietfeld, A.C. (eds) *Zwischen Theorie und Praxis - Herausforderungen des Arbeitsrechts*, Baden.
- Sigge, A.-C. (2014), 'content.de und die Abgaben an die Künstlersozialkasse', available at <https://blog.content.de/2014/04/07/content-de-und-die-abgaben-an-die-kuenstlersozialkasse>.
- Silberman, M. (2018), 'Untitled Presentation', conference presentation, *Sharers & Workers - A dialogue on online platforms*, 23 January, Brussels.
- Silberman, M. and Irani, L. (2016), *Operating an employer reputation system: lessons from Turkopticon, 2008–2015*, University of California San Diego, San Diego.
- Schweitzer, H., Fetzer, T. And Peitz, M (2016), *Digitale Plattformen: Bausteine für einen künftigen Ordnungsrahmen*, Zentrum für Europäische Wirtschaftsforschung, Mannheim.
- The Local* (2017), 'Foodora and Delivero Couriers protest working conditions in Berlin', 18 May.
- The New York Times* (2014), 'German Court Lifts Ban on Uber Ride Service', 16 September.
- The New York Times* (2015), 'An Uber Service Is Banned in Germany Again', 18 March.
- Tornau, J.F. (2016), 'Im rechtsfreien Raum. Mitbestimmung', *Das Magazin der Hans-Böckler-Stiftung*, Vol. 2, pp. 25–26.
- Verbraucherzentrale Bundesverband e.V. (2016), *GRÜNBUCH DIGITALE PLATTFORMEN*, Verbraucherzentrale Bundesverband e.V., Berlin.
- Waas, B. (2017) 'Crowdwork in Germany', in Waas, Liebman, Lyubarsky and Kezuka (eds), *Crowdwork - A Comparative Law Perspective*, HSI Schriftenreihe, Vol. 22, pp. 142-186.

Waltermann, R. (2010), ‘Welche arbeits- und sozialrechtlichen Regelungen empfehlen sich im Hinblick auf die Zunahme Kleiner Selbstständigkeit?’, *Recht der Arbeit*, Special Volume, pp. 162–170.

Wank, R (no date), *Workers‘ Protection – National Study for Germany for the ILO*, Ruhr University, Bochum, Germany.

Welskop-Deffaa, E. (2016), *Die Zukunft der Rente in der Arbeitswelt 4.0*, Bundeszentrale für politische Bildung, Bonn.

World Health Organization (WHO) (2012), *Country Profile of Occupational Health System in Germany*, World Health Organization Regional Office for Europe, Bonn.

Annex: Platforms mentioned in text

Platform	Platform work type
99designs	Online contestant specialist work
Amazon Mechanical Turk	Online moderately skilled click-work
appJobber	On-location client-determined higher-skilled
Betreut.de	On-location client-determined moderately skilled work
BOOK A TIGER	On-location platform-determined routine work
clickworker	Online moderately skilled click-work
Content.de	Online client-determined specialist work
CrowdFlower	Online moderately skilled click-work
Crowd Guru	Online moderately skilled click-work
Deliveroo	On-location platform-determined routine work
Foodora	On-location platform-determined routine work
Helpling	On-location worker-initiated moderately skilled work
jovoto	Online contestant specialist work
Massagio	On-location client-determined higher-skilled work
Movinga	On-location client-determined moderately skilled work
MyHammer	On-location client-determined moderately skilled work
Streetspotr	Other*
Testbirds	Other*

*Streetspotr primarily intermediates ‘retail intelligence’ tasks, in which the platform creates an open call for a low-skill task (taking a picture) at a given location, which any platform worker can perform. Testbirds is a software testing platform, whereby platform workers receive offers for tasks that match their profile.

WPEF18055

The European Foundation for the Improvement of Living and Working Conditions (Eurofound) is a tripartite European Union Agency, whose role is to provide knowledge in the area of social, employment and work-related policies. Eurofound was established in 1975 by Council Regulation (EEC) No. 1365/75, to contribute to the planning and design of better living and working conditions in Europe.